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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/631,950  | 07/30/2003  | Ronald C. Elliot     | ECC-02100           | 1764             |
| 28960   | 7590        | 07/20/2005           | EXAMINER            |                  |
| HAVERSTOCK & OWENS LLP<br>162 NORTH WOLFE ROAD<br>SUNNYVALE, CA 94086 |             |                      | GEHMAN, BRYON P     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3728                |                  |

DATE MAILED: 07/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/631,950

Applicant(s)

ELLIOT, RONALD C.

Examiner

Bryon P. Gehman

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-38 and 40-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 and 40-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12, 16-22, 24-28, 32-33, 37 and 40-49 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Webster (1,157,475) in view of Ban (4,533,044). Webster discloses a paint storage apparatus comprising a container or cup divided into a plurality of compartments (5 and 6) and including painting implements disclosed as supported in the compartments. Ban discloses a paint storage apparatus with a lid (19) having a plurality of orifices (22) providing paint implement support and groove means (rim 20). To modify the paint storage apparatus of Webster employing a lid having a plurality of orifices aligned over each compartment would have been obvious in order to allow individual paint implement support, as suggested by Ban.

As to claims 2-5, 7-11, 17-21 and 40-43, each reference discloses a cylindrical shape and a circular in cross section shape. The exact shape of the apparatus would have been a matter of design choice, the shape of the apparatus not providing any new and unexpected result.

As to claims 24-26 and 45-48, the container of Ban is uniformly formed of a homogeneous material (solvent resistant plastic). The exact polymer resin (polypropylene) chosen would appear to be a matter of design choice.

As to claims 9 and 19, to employ a conventional bucket shape for the paint storage apparatus would appear to have been obvious to one of ordinary skill in the art and fail to distinguish any new and unexpected result.

As to claims 28 and 49, the tops of the orifices of Ban are shown as tapered to engage the painting implements.

3. Claims 1-5, 16-22, 24-28, 32-33, 37 and 40-49 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Crilly (5,746,346) in view of Ban (4,533,044). Crilly discloses a paint storage apparatus comprising a container or cup divided into a plurality of compartments (10, 11 and 13; respectively) and including painting implements disclosed as supported in the compartments. Ban discloses a paint storage apparatus with a lid (19) having a plurality of orifices (22) providing paint implement support and groove means (rim 20). To modify the paint storage apparatus of Crilly employing a lid having a plurality of orifices aligned over each compartment would have been obvious in order to allow individual paint implement support, as suggested by Ban.

As to claims 2-5, 17-21 and 40-43, each reference discloses a cylindrical shape and a circular in cross section shape. The exact shape of the apparatus would have been a matter of design choice, the shape of the apparatus not providing any new and unexpected result.

As to claims 24-26 and 45-48, the container of Ban is uniformly formed of a homogeneous material (solvent resistant plastic). The exact polymer resin (polypropylene) chosen would appear to be a matter of design choice.

As to claims 9 and 19, to employ a conventional bucket shape for the paint storage apparatus would appear to have been obvious to one of ordinary skill in the art and fail to distinguish any new and unexpected result.

As to claims 28 and 49, the top of the orifices of Ban are shown as tapered to engage the painting implements.

4. Claims 16-18, 20-27, 29, 32, 37, 40-48 and 50 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Davis (2,826,338). Disclosed is a liquid storage apparatus comprising a container or cup (10) divided into a plurality of storage compartments by a wall (18 or 40 or 54) and a lid (12) having a plurality of orifices (at 14 and 15) with one orifice over each compartment, the lid mating with the walls to create a seal between the lid and walls. To employ the same structure for paint would have been obvious in order to provide different paints in plural compartments of a single container, the intent suggested by Davis.

As to claims 17-18, 20-21 and 40-43, the container or apparatus and lid are shaped angular (rectangular) in cross section. The shape of the container would have been an obvious matter of design choice, the shape not providing any unexpected utility.

As to claims 24-27 and 45-48, the container or apparatus is a homogeneous material (metal or plastic) of a liquid impervious nature, the choice of polypropylene being an obvious choice to one of ordinary skill in the art.

As to claims 29 and 50, a cap (14a or 15a) is disclosed.

As to claims 22-23, the lid includes peripheral grooves (12a and 13a) and guiding means (19).

As to claim 32, an annular ring is defined at 13.

5. Claims 13-14, 29-31 and 50-54 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Webster or Crilly as applied to claims 6, 16 and 44 above, and further in view of Hawkins (5,490,608). Hawkins discloses a hinged lid (18 or 22) provided with a tab to conventionally facilitate opening the lid. To further modify the combination of Webster or Crilly employing a lid with a tab as taught by Hawkins would have been obvious in order to seal the paint within the compartments and facilitate opening of the lid.

6. Claims 15, 23 and 34-36 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the combinations of Webster or Crilly as applied to claims 6 and 16 above, and further in view of Eckhaus (2,016,488). Eckhaus disclose grooves engaging a lid to a container. To modify the prior combinations employing grooves to engage a lid to a container would have been obvious in view of Eckhaus, in order to secure the lid to the container in a sealed manner.

7. Claim 38 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over either one of Webster and Crilly in view of Ban and Jaarsma. Webster, Crilly and Ban have been described above. Jaarsma discloses injection molding thermoplastic to

comprise a container. To employ thermoplastic to provide the molded container of either one of Webster and Crilly in the manner of Ban would have been obvious, as molding heated plastic is old and well known in the container making field.

8. Applicant's arguments with respect to claims 1-38 and 40-54 have been considered but are moot in view of the remaining ground(s) of rejection. With respect to the rejections retained employing Davis, there is no structure except the contents being paint that distinguishes Davis from applicant's claimed structure, the particular content of the storage apparatus being considered within the level of ordinary skill for one to pick and choose. The lid is not claimed as "removable".

With respect to the combination of either Webster or Crilly with Ban, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

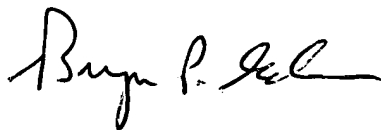
Art Unit: 3728

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG